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Congress of the United States

House of Representatives

Washington, DC 20515-2107

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The Honorable Spencer Abraham
Secretary
Department of Energy
Washington, DC 20585

Dear Secretary Abraham:

I am writing to express my concern about the termination of the National Nuclear Security Administration (NNSA) Advisory Committee. This committee was comprised of experts both inside and outside of government and provided an independent analysis of the status and needs of NNSA's efforts to maintain and enhance the safety, reliability and performance of the U.S. nuclear weapons stockpile and to detect the proliferation of weapons of mass destruction worldwide. This complex and important mission demands outside guidance unbiased by institutional preconceptions and preferences. The dissolution of the Advisory Committee, coupled with the attachment of a DOE-supported exemption from the Federal Advisory Committee Act for the Department of Energy in the House-passed version of National Defense Authorization Act for FY 2004, suggest that the Department of Energy is seeking to close itself off from any independent outside expert advice regarding its nuclear weapons programs.

The NNSA Advisory Committee was created by then NNSA Administrator John Gordon on June 25, 2001 to "review the ... NNSA research and development portfolio and make strategic recommendations for strengthening NNSA leadership and science and technology." The membership of the inaugural committee (attached) was such that any individual preconceived notions about nuclear weapons, either pro or con, would be balanced by others on the committee. The charter of the committee (attached) indicated an ongoing need for the Advisory Committee and the first letter (attached) to the Chairman of the Committee, Admiral Hank Chiles, requested a specific study of the programs operated by the NNSA. An interim report was due by November 1, 2001 and a final report was due by March 1, 2002. The Committee met five times: June 26-27, 2001, August 15, 2001, October 19-20, 2001, February 12-13, 2002 and May 14-16 2002. The Advisory Committee was created under the auspices of the Federal Advisory Committee Act, which means that Congress and the public must be kept informed about the activities—including disbanding—of the committee. The meetings of the Committee were advertised in the Federal Register and were open to the public, as appropriate. However, the Committee failed to release both the preliminary and final versions of its requested report.

Since April 25, 2002, the NNSA Advisory Committee has not been mentioned in the Federal Register. The report requested by former NNSA Administrator John Gordon was not released, as required by the Federal Advisory Committee Act. Further, the dissolution of the committee was not announced in the Federal Register, also as required by the Federal Advisory

Committee Act. In fact, the Committee was disbanded via an email sent by Betty Morris of the NNSA to the members of the Committee.

The disbanding of the NNSA Advisory Committee leaves our government with only one entity dedicated to setting and examining U.S. nuclear weapons policy. This entity, the Nuclear Weapons Council (NWC), has only three members, namely, the Under Secretary of Defense for Acquisition and Technology, currently Michael Wynne; the Vice Chairman of the Joint Chiefs of Staff, currently General Peter Pace; and the Under Secretary for Nuclear Security of the Department of Energy, currently Linton Brooks. I am uncomfortable with this situation, as the NWC is composed entirely of government officials, and therefore is not really suited to perform the functions of a federal advisory committee.

Accordingly, I respectfully request your assistance in providing prompt responses to the following questions:

1. The NNSA Advisory Committee is subject to the Federal Advisory Committee Act (FACA). This Act requires that "the Congress and the public should be kept informed with respect to the ... activities ... of advisory committees" and that the Committee "administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee." What reports has this Committee produced? The June 24, 2002 Federal Register indicates that a report covering two of Advisory Committee meetings was produced but is only available at the Department of Energy. Why were these reports not released to the Congress or the public? Why were no copies of these reports submitted to the Library of Congress? Please provide me with copies of all reports or other documents prepared by this advisory committee.
2. The NNSA Advisory Committee was created by Linton Brooks' predecessor, General John Gordon, and met several times during his tenure. However, according to the Federal Register, the Committee has not met since May 16, 2002, prior to Mr. Brooks' appointment as acting Administrator of the NNSA on July 8, 2002. Given that the Charter for the NNSA Advisory Committee states that "the Committee is expected to be needed on a continuing basis" and that "meetings ... will be held approximately four times each year", please explain why no meetings have been held in the last year.
3. The scope of activities and duties for the NNSA Advisory Committee, as described in its Charter, is broad and complex. Given the lack of meetings in the last year and the lack of any substantial reporting from the Advisory Committee, please explain how the Committee has fulfilled its mandate. If it has not fulfilled its mandate, please explain why the Committee was disbanded.
4. The United States Government is currently considering policy changes which may alter or affect the role of nuclear weapons in national defense, including possible use of nuclear weapons in the context of the Administration's strategy of pre-emptive attacks against threats to U.S. security. It is also considering a proposal which may affect the role of nuclear weapons in deterring not only nuclear weapons attacks, but also biological

and chemical weapons. It is reviewing the size of the nuclear weapons stockpile, the need for tritium production, the need for a Modern Pit Facility, the need for new nuclear weapons such as the Robust Nuclear Earth Penetrator, the design or testing of nuclear weapons with yields of less than 5 kilotons, and a possible return to nuclear testing. Given the importance and sheer complexity of the issues raised by each of these questions, please explain why the only independent contemplative body studying nuclear weapons was disbanded. From what source will this analysis come?

5. Section 3114 of the National Defense Authorization Act for Fiscal Year 2004—passed by the House of Representatives on May 22, 2003— states:

An officer or employee of a management and operating contractor of the Department of Energy, when serving as a member of a group reviewing or advising on matters related to any one or more management and operating contracts of the Department, shall be treated as an officer or employee of the Department for purposes of determining whether the group is an advisory committee within the meaning of section 3 of the Federal Advisory Committee Act (5 U.S.C. App.).

This language, if enacted, would allow the Department of Energy to close all DOE advisory committees to public access and end Congressional oversight. I have been informed that this language was requested by the Department. Is this true, and if so, please explain why the Department has sought to accord federal employee status to DOE contractor employees for the purpose of serving on federal advisory committees? If the Department did not seek inclusion of this language, please provide the Department's views on the provision.

Thank you for your assistance and cooperation in providing prompt responses to these questions. I would appreciate your response to these questions by August 29, 2003. Please have your staff contact Dr. Benn Tannenbaum or Mr. Jeffrey Duncan of my staff at (202) 225-2836 if you have any questions about this request.

Sincerely,



Edward J. Markey
Member of Congress

cc: Dr. Condoleezza Rice
The Honorable Donald Rumsfeld